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EXTRADITION—THE LAW AND PROCEDURE.

It is proposed to discuss extradition and the helpful manner in which some unnecessary conflicts were cleared up by Mr. Justice Pitney in the case of Hogan v. O'Neill (8 U. S. Sup. Ct. Ad. Op. 1920-21, p. 272), but the recent and persistent agitation for shorter opinions justifies a diversion for the purpose of commending the opinion in the instant case as responding to the wishes of the strictest sect. It is, in fact, an example that should be pointed out and read in every Law School in the country, as showing how perfectly every needed element and authority may be encompassed in small space by a mind that has mastered the subject and is capable of concentration.

So frequently do extradition problems arise and so energetically and bitterly are they resisted that it has been deemed useful to direct the attention of lawyers to this fruitful opinion. The salient principles are tersely expressed. "Whether in fact one is a fugitive from justice is for the determination of the Governor of the demanding state." "His conclusion must stand unless clearly overthrown." "To be regarded as a fugitive from jusitce it is not necessary that one shall have left the state in which the crime is alleged to have been committed for the very purpose of avoiding prosecution, but simply that having committed there an act which, by the law of the state constitutes a crime, he afterwards has departed from its jurisdiction and, when sought to be prosecuted is found within the territory of another state." These three points go further towards fixing controlling standards than any preceding utterances and offer hope to the effort to standardize a grave official function so largely under the control of political Governors and solely under their control in case of a declination.

Disposition of the issue of pleading was as simply and summarily made. "Federal courts * * * will take notice of the laws of the demanding state" and so the disregard of technicality and detail by that State is respected. That it was Massachusetts demanding of New Jersey adds dignity to this important point. The Bay State had so departed from provincialism as to sensibly simplify the form of indictment and, manifestly, objection was made because of its novelty to a technical age. In any event "the pleading * * * would not be open to inquiry on habeas corpus."

Both the Governor and the Courts are obliged to take notice of the laws of the demanding state. For instance, as at common law, conspiracy to commit a crime in Massachusetts is complete without an overt act, and the latter is therefore not of the essence of the offense. It is a safe assumption that this duty will be observed by the Courts. It is the conduct of political Governors that gives concern.

The seat of the initial power of control calls to mind the danger, if not the threat, of the influence of politics, racial prejudices or sectional animosities, destroying the uniformity of operation of extradition laws and makes most welcome every pronouncement that tends to create an accepted body of extradition law. There ought, in fact to be some concert of opinion in that respect although it might, in the absence of statute, have to be enforced under the influence of sentiment. A National law would be unwelcome, if constitutional, that attempted to regulate state or private conduct in this respect. One, however, looks upon the success of the uniform negotiable instrument law, and other uniform statutes, as a happy augury.

Under the decision in the instant case, the power of the demanding Governor is great, if respected by the surrendering Gov-

ernor for, notwithstanding a contrary opinion entertained by the surrendering Governor, in law, that of the demanding Governor must be respected "unless clearly overthrown." Except where passion has enslaved reason it is difficult to imagine a demand so wholly without foundation as to be susceptible of such a fate. Such a condition would not merely be beneath the dignity of an ancient and honorable office, but would suggest such a deplorable and obvious wantonness, oppression and prejudice as to assure unfitness for office and a misrepresentation of a respectable people. And yet a recalcitrant Governor may nullify this law.

The capricious or wanton refusal of the surrendering Governor is the greatest vice, since there is not apparent a judicial remedy. The protected fugitive needs no other assistance and the Governor cannot be coerced except when driven by public opinion. But, an inflamed public sentiment based upon this misinformation, or any of the passions heretofore pointed out, may lend an ephemeral support from which the Governor would plead justification for the protection given to the legally indicted fugitive.

If we have succeeded in developing the point, there will follow in the minds of the thoughtful a conviction of the necessity, if happy interstate relations shall continue, of a standardization of the rules (we will not call them laws) of extradition, so firmly established as to be compulsory over politics, passion, prejudice or State pride. It is a problem of our complex nationalism awaiting the wisdom of a Solomon. But, there is no reason why one should not hope and help and wait. The basis of it may be found in Hogan v. ONeill. The necessary energy may be found in a wholesome public sentiment born of the necessity of freeing justice from the caprice of Governors or the incubus of the influence of politics and passion.

THOMAS W. SHELTON.

NOTES OF IMPORTANT DECISIONS.

AGREEMENT TO EXECUTE A NEW LEASE WITHIN STATUTE OF FRAUDS.—Some lawyers make the mistake of thinking that an oral agreement to make a new lease and simply remaining on premises is enforceable, without more, on the theory of part performance. There must be in such cases a special reliance on the oral agreement to execute the lease, such as making expenditures in fitting up and improving the property for the purposes contemplated by the lease, to constitute such part performance which will take the contract out of the Statute of Frauds.

This distinction is made clear in the recent case of Blumenfeld v. Bernstein (N. Y. App. Div.), 65 N. Y. L. J. 153. In this case the plaintiff lessee claimed that in September, 1919, the rent collector of landlords' premises negotiated with him for a new lease, to commence upon the expiration of the existing lease, upon the following April 30, 1920, and that two copies of the proposed new lease were thereafter prepared specifying a yearly rent of $3.240, which he signed, and that he was assured that everything would be all right. The landlords did not send the new lease as promised. On November 19 1919, the tenant received a registered letter from landlords, in which tenant was told he could have a new lease at a yearly rental of $3,900, and requesting reply by return mail. The tenant did not reply, and admitted that he knew at least five months before the expiration of his term that the landlords would not lease the premises to him at the yearly rental of $3,240. On April 30, the last day of the old term, the landlords were served with an order to show cause in an action enjoining them from commencing or prosecuting any proceeding to recover the possession of the premises, and demanding specific performance of the alleged agreement of lease at the $3,240 rental. The Special Term found that plaintiff relied upon defendants' representations that the leases would be executed, and that in reliance thereon plaintiff made no efforts to secure suitable quarters for his business elsewhere.

The Appellate Division held that the Statute of Frauds was a complete defense to plaintiff's claim, and nothing was done to take the case out of the operation of the statute, as there was no written lease subscribed by the defendants or by their lawfully authorized agent,

nor was there any part performance of the alleged agreement to lease.

The case of Roedmann v. Hertel, 78 Misc. 55, shows the circumstances under which the rule of part performance is applied. In that case it appeared that the day after an unsigned lease was given to the party, he paid a deposit and received a receipt reciting a five-year lease, and then entered into possession and made permanent improvements, which cost a considerable amount of money. The court held under these circumstances that there was evidence to show part performance and a sufficient compliance with the statute to justify specific performance of the agreement.

INDUSTRIAL COERCION.

The question of interference for labor or business reasons with the individual freedom either of a workman or of a capitalist is one which is causing at present much conflict of opinion here. At common law, every man has a right to dispose of his labor as he chooses, subject to the limitations recognized by law. The *raison d'etre* of this sound maxim is concisely stated by Lord Sumner in his judgment in Rodrigue v. Speyer:[1] "A man validly contracts as he will because he is a free man; he validly disposes of his property as he will because it is his own." By statute, however, (The Trades Disputes Act of 1907) it is provided that, if an act is done by a person in contemplation or furtherance of a trade dispute, it is not actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

There have been a large number of Trade Union cases in which the above section has been pleaded as a defense to the action, and in each case the onus is upon the defendant to show that there was a trade dispute in existence or contemplation, that the act complained of was done in contemplation or furtherance of that dispute, but even assuming these facts to be proved, the tort may be actionable on other grounds not covered by the limitations of this section.

Thus, in Conway v. Wade,[2] Lord Loreburn in the course of his judgment says: "It is clear that if there be threats or violence this section gives us protection, for then there is some ground of action besides the ground that 'it induces some other person to break a contract' and so forth. So far, there is no change. If the inducement be to break a contract (of employment) without threat or violence, then this is no longer actionable, provided always that it was done 'in contemplation or furtherance of a trade dispute' . . . If there be no threat or violence, and no breach of contract, and yet there is 'an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labor as he wills,' then again there is perhaps a change. It is not to be actionable, provided that it was done 'in contemplation or furtherance of a trade dispute.'"

It is also clear that if the "inducement or interference in contemplation or furtherance of a trade dispute" is brought about by coercion or intimidation, the section of the Act affords no protection. Whether or not such is the case is a question of fact which it is often very difficult to determine. As Astbury, J., says in Valentine v. Hyde and Howard:[3] "Provided that the method employed to affect a purpose otherwise lawful did not consist in anything beyond a warning it had been said that that was unobjectionable in law, but the distinction between coercion in its varied forms, which was unlawful, and a warning which was not was a fine one in many cases, and it was a question to be determined on the facts, and the true inference

(1) (1909) A. C. 59.

(2) (1909) A. C. 506.

(3) (1919) T. L. R. 301.

to be deduced from them in each case, on which side of the line the action fell."

There is much uncertainty as to what the familiar terms—"coercion," "intimidation," "restraint of trade," "Peaceful persuasion" really amount to. The decision in Davies v. Thomas,[4] to which we now refer though apparently in favor of the Association really turned on the facts of the case. The rules of an association of employers in a particular trade provided that if an employe of a member of the association left the service of his employer no other member of the association should employ or supply him for twelve months. The plaintiff, who was employed as a traveler by Williams, the secretary of the association, left him and entered the service of Hopkins, another member, for whom he canvassed the customers of Williams. At a meeting of the association convened by Williams, Hopkins was persuaded by Williams and other members to give the plaintiff notice to terminate his employment. No illegal means, such as coercion, threats, or intimidation were used to induce Hopkins to dismiss the plaintiff. The plaintiff brought an action against Williams, and the other officials of the association for an injunction to restrain them from interfering with him in his calling, and for damages. Mr. Justice Lawrence held and the Court of Appeal affirmed that the plaintiff had no cause of action against the defendants.

The following observations by Lord Justice Warrington are of very general interest today—"If I see that a man is employing a person under circumstances which make it, in my opinion, not quite fair or right that he should be employing him, am I committing an illegal act because I get a man who also holds the same opinions to go with me and we together represent to the employer that he is not doing what he ought to do? I think that can only be answered in one way. It seems to me, therefore, that on the facts, as I have stated them, which I think are the result of those found by the learned judge, that the plaintiff could have no right of action against these defendants. But I must not dismiss it quite so shortly as that. It may be that, if a great number of persons are engaged in the transaction, from that fact you may be able to infer pressure or unconscious influence, which it would be impossible to infer from the act of one person by himself. I do not deny that that may be so, and, in that sense, the fact that the inducements are used by more persons than one, may become a material element, but it is excluded in the present case, because the learned judge has found on the facts in this case that there was no undue pressure or undue influence of any sort. Therefore, in this case at any rate, the fact that the persuasion was used by several people acting together is immaterial. But then it is suggested that what was done was in pursuance of an unlawful conspiracy because the parties in question were all members of the association, the rules of which include a rule to this effect: "On an employe leaving an employer who is a member of the association, the employer shall, if desirous, report the same to the secretary who shall advise all the members, and no other member of the association shall employ, or supply him for twelve months." I confess I cannot follow that.

"Unlawful conspiracy" was defined by Willes, J.,[5] in this way: "conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means." That is to say, to be a conspiracy—that is an unlawful conspiracy, one which gives rise to either an indictment or a right of action—it must have an unlawful object, that is, the act which it is intended to bring about must be in itself unlawful, or if not in itself unlawful then it must be brought about by

(4) (1920) 84 J. P. 201.

(5) Mulcahy v. R. (1868), L. R. 3 H. L. 317.

unlawful means. Neither of those two essentials is to be found in the agreement contained in this rule.

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FAILURE OF BANK TO APPLY MAKER'S DEPOSIT TO OVERDUE PAPER.[1]

Under Section 3054 of the Civil Code of California, a bank or banker has a general lien, dependent upon possession, upon all property in its or his hands belonging to a debtor-customer, for the balance due to it or him from such customer in the course of business. And where the bank or banker holds a mature or a past-due negotiable instrument of a depositor, a general deposit of such customer-debtor may be applied in discharge of such mature or past-due obligation.

Under the Uniform Negotiable Instruments Act, passed by the California legislature and approved on June 1, 1917, it is held to be the duty of a bank or banker to apply a general deposit in discharge of past-due obligations on negotiable instruments of the depositor which are held by the bank, and that the failure to make such application, but permitting the depositor to check-out or withdraw his deposit without first discharging his obligation on the past-due paper, releases an accommodation indorser from his liability on his contract of indorsement under the present Section 3110 of the Civil Code,[2] which is Section 22 of the Uniform Negotiable Instruments Law, as proposed by the Conference of Commissions on Uniform State Laws.

The liability of an indorser in due course, or of a surety upon an instrument and not a principal contracting party thereby, stands upon a different footing, it seems. The discharge of persons secondarily liable upon a negotiable instrument is governed by the present Section 3201 of the California Civil Code, which is Section 120 of the Uniform Negotiable Instrument Act as drafted and advocated by the American Bar Association's Commission. This section enumerates the acts and things which will discharge a person secondarily liable, but does not specify among these things the failure of a bank to apply a general deposit of the maker or principal obligor in discharge of the obligation of the customer-debtor.

In some of the states, as in Oklahoma,[3] a surety may require his creditor to proceed against the principal obligor, or to pursue any other remedy in his power which is not open to the surety and which he cannot pursue himself, and which would lighten the burden of the surety; and in case the creditor fails or neglects to proceed against the principal debtor, or to pursue the other remedy open to him, as desired by the surety, such surety will be exonerated to the extent that he is injured by such failure or neglect of the creditor. Such a statutory provision is not in conflict with Section 3201 of the California Civil Code (§ 120, W. N. J. Law), but is an enlargement of the grounds of discharge as therein enumerated.[4]

In the absence of any aiding statute on the subject, what is the effect, as to persons secondarily liable, of the failure of a bank, which is the owner of a note or other commercial paper upon which there are indorsers or sureties, and which bank, at the maturity of such debt, is indebted to the

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(2) The Alabama legislature adopted, in 1907, the Uniform Negotiable Instrument Act proposed by the American Bar Association, so that the courts of Alabama are controlled by the same statutory provisions, on this subject, as the California courts are controlled now. The holding above set forth was made in the case of Tatum v. Commercial Bank and Trust Co., 193 Ala. 120, L. R. A. 1916C, 767, 69 So. 508, but in that case the note was payable in Kentucky, and there was no proof that the Uniform Negotiable Instrument Act was in force in that State, so that the decision is not, under N. I. Act.

(3) Rev. Laws 1910, § 1058. See Cal. Civil Code §2846.

(4) National Bank v. Lowrey (Okla.), 157 Pac. 103.

principal maker or obligor on a general deposit in an amount equal to or in excess of the due-indebtedness on the commercial paper, and the bank neglects to apply the general deposit-indebtedness to the satisfaction of the commercial paper, but permits such general deposit to be checked out or withdrawn?

The general rule, which is practically universal, is to the effect that a creditor who has in his hands means of paying his debt out of the creditor's property and fails to so apply the property, but relinquishes his security upon the debtor's property, thereby discharges, *pro tanto*, all persons secondarily liable, excepting always those cases in which there was consent to and concurrence in the conduct of the creditor by such persons secondarily liable.[5] In other words, a creditor must apply to the payment of his debt, or hold in trust for sureties and other persons secondarily liable, all securities which he may receive for that purpose by contract, or by operation of law; and where a surety is compelled to discharge the indebtedness, he is entitled to be subrogated to such sureties.[6] The same is true of an indorser, even though a judgment may have been taken against him on the indebtedness.[7]

But the question whether a general deposit on account in a bank, which is the holder of mature or of past-due commercial paper, is within the above rule, is one upon which the decisions are not harmonious. One line of decisions adopt the doctrine that a general deposit in a bank is a security for, or the means of satisfaction of, a note or other commercial paper of the depositor, which paper is mature or past-due and held by the bank; and that permitting the debtor-depositor to check-out or withdraw such deposit without having first discharged his past-due obligation, has the same effect, upon persons secondarily liable, as the surrender to the principal debtor of a collateral security pledged for the payment of the debt would have.[8] Some of the

(5) See, among other cases: Cullen v. Emanuel, 1 Ala. 23, 34 Am. Dec. 757; Perrine v. Fireman's Ins. Co., 22 Ala. 575; Dawson v. Real Estate Bank, 5 Ark. 283; Montgomery v. Sayre, 100 Cal. 182, 38 Am. St. Rep. 271, 34 Pac. 646; Eppinger v. Kendrick, 114 Cal. 630, 46 Pac. 613; Day v. McPhee, 41 Colo. 467, 93 Pac. 670; First Nat. Bank v. Watt, 7 Idaho 510, 64 Pac. 2[illegible] Phares v. Barbour, 49 Ill. 370; Kirkpatrick v. Howk, 80 Ill. 122; Sample v. Cochran, 82 Ind. 260; Wasson v. Hodshire, 108 Ind. 26, 8 N. E. 621; Redlon v. Heath, 59 Kan. 255, 52 Pac. 862; Young Men's Christian Assoc. v. United States Fidelity & Guaranty Co., 90 Kan. 332, 133 Pac. 894; Royster v. Heck, 14 Ky. L. Rep. 266; Provan v. Percy 11 La. Ann. 179; Gay v. Blanchard, 32 La. Ann. 497; Springer v. Toothaker, 34 Me. 381, 69 Am. Dec. 66; Cummings v. Little, 45 Me. 183; Baker v. Briggs, 25 Mass. (8 Pick.) 122, 19 Am. Dec. 239; Finnegan v. Janeway, 85 Minn. 384, 80 N. W. 4; C. Gotzian & Co. v. Heine, 87 Minn. 429, 92 N. W. 398; Ferguson v. Turner, 7 Mo. 497; State Bank v. Bartle, 114 Mo. 726, 21 S. W. 816; Bronson v. McCormick Harvesting-Machine Co., 52 Neb. 342, 72 N. W. 312; Stewart v. American Exchange Bank, 54 Neb. 461, 74 N. W. 865; Pierce v. Atwood, 64 Neb. 92, 89 N. W. 669; Morgan v. Salmon, 18 N. M. 72, 135 Pac. 553; Griswold v. Jackson, 2 Edw. Ch. (N. Y.) 461; Third Nat. Bank v. Shields, 55 Hun (N. Y.) 274, 8 N. Y. Supp. 298; Nelson v. Williams, 22 N. C. (2 Dev. & B. Eq.) 118; Smith v. McLeod, 38 N. C. (3 Ired. Eq.) 390; Johnson v. Jones, 39 Okla. 323, 135 Pac. 12; Brown v. Rathburn, 10 Oreg. 158; Appeal of Neff, 9 Wats & S. (Pa.) 36; Bank of Gettysburg v. Thompson, 3 Grant Cas. (Pa.) 114; Everly v. Rice, 20 Pa. St. 297; Fegley v. McDonald, 89 Pa. St. 128; Molaka v. American Fire Ins. Co., 29 Pa. Super. Ct. Rep. 149; Hoss v. Crouch (Tenn. Ch. App.), 48 S. W. 724; Kain v. Cummings, 13 Tex. Civ. App. 198, 36 S. W. 770; Shannon v. McMullin, 25 Gratt. (Va.) 211; Evans v. Kister, 35 C. C. A. 28, 92 Fed. 828; Wood v. Brown, 43 C. C. A. 474, 104 Fed. 203; Brown v. First Nat. Bank, 66 C. C. A. 293, 132 Fed. 450.

(6) Glazier v. Douglass, 32 Conn. 393.

(7) McDowell v. Bank of Wilmington & Brandywine, 1 Harr. (Del.) 369.

(8) See Second Nat. Bank v. Hill, 76 Ind. 223, 40 Am. Rep. 239; Falkner v. Cumberland Valley Bank, 14 Ky. L. Rep. 923; Fordsville Banking Co. v. Thompson, 26 Ky. L. Rep. 534, 82 S. W. 251; Bank of Taylorsville v. Hardesty, 28 Ky. L. Rep. 1285, 91 S. W. 729; Burgess v. Deposit Bank, 30 Ky. L. Rep. 177, 97 S. W. 761; Planters' State Bank v. Schlamp, 30 Ky. L. Rep. 473, 99 S. W. 216; Pursiful v. Pineville Banking Co., 97 Ky. 154, 53 Am. St. Rep. 409, 30 S. W. 203; Bank of Marysville v. Windisch-Muhlhauser Brewing Co., 50 Ohio St. 151, 33 N. E. 1054; Commercial Nat. Bank v. Henninger, 105 Pa. St. 496; German Nat. Bank v. Foreman, 138 Pa. St. 474, 21 Am. St. Rep. 908, 21 Atl. 20; Mechanics' & Traders' Bank v. Seitz, 150 Pa. St. 632, 30 Am. St. Rep. 853, 24 Atl. 356; Newbold v. Boon, 6 Pa. Super. Ct. Rep. 511.

"If the bank, at the maturity of a note held by it, holds funds that, by the scratch of a pen, it could apply upon the note, thus securing itself,

cases go to the extent of holding that the rule is applicable in those cases in which commercial paper is made payable at the bank, but is the property of another person, on the theory that the fact the instrument is made payable at the bank constitutes it, in effect, a draft upon the bank in favor of the payee or holder of such paper.[9]

The reason for this rule is founded upon the ground that the maker is the principal debtor, and liable to the securities and the indorsers, whose undertaking is to pay if he does not, and that if the bank, as the holder of the security or money out of which the obligation can be discharged, by permitting its withdrawal, parts with that in which the securities and the indorsers all have an interest.[10] Some of the cases assume that a bank having an opportunity to protect a surety upon a note held by it, by asserting its right to set-off against the same its own indebtedness to the principal maker of the due commercial instrument, and which bank's indebtedness is due upon his general deposit account, owes a duty to the surety to do so.[11] But the rule will not apply as to a deposit made by the principal debtor under an agreement by the bank that it will be paid by the bank to specified creditors of the principal maker.[12] And where the principal maker does not have on deposit sufficient funds to discharge the due instrument, subsequent deposits made by him are not required to be applied by the bank to a discharge of the unpaid balance.[13]

On the other hand, there is a line of decisions which hold—and this is the prevailing rule in the majority of the states—that the bank or the banker is not bound, even though he has the legal right to do so, to apply a general deposit on account to the discharge of a mature or past-due negotiable instrument held by it or him, or to the discharge of such an instrument made payable at the bank. This doctrine is placed on the double ground (1) that the bank, whether the holder of the negotiable instrument or simply the place where it is made payable, owes no duty to a security or to an indorser to apply the maker's general deposit on account to the discharge of the instrument upon its maturity, and (2) that the bank, being the absolute owner of the money held in the customer-maker's general deposit on account, is the mere debtor of the depositor for any balance on account in the due course of business, and for that reason holds neither property nor money in which the depositor has any title or right of which the surety, on an independent debt of the depositor, is entitled to avail himself by way of subrogation.[14] And this rule has been said to hold good even in those cases in which there is fraud upon the part of

it is difficult to see why neglecting so easy a means of security is not as improper as giving up collateral expressly designated for the purpose of securing the note."—2 Morse on Banks & Banking, 3rd ed., § 563.

(9) Commercial Nat. Bank v. Henninger, 105 Pa. St. 496; German Nat. Bank v. Foreman, 138 Pa. St. 474, 21 Am. St. Rep. 908, 21 Atl. 20.

(10) Merchants' & Traders' Bank v. Seitz, 150 St. 632, 30 Am. St. Rep. 853, 24 Atl. 356.

(11) See Lowe v. Raddan, 123 Wis. 90, 100 N. W. 1038.

(12) Royes v. Winchester Bank, 148 Ky. 368 146 S. W. 738.

(13) Guernsey v. Marks, 55 Oreg. 323, 106 Pac. 334.

(14) See Perrine v. Fireman's Ins. Co., 22 Ala. 575; Merchants' & Planters' Bank v. Meyer, 56 Ark. 499, 20 S. W. 406; Glazier v. Douglass, 32 Conn. 393; Camp v. First Nat. Bank, 44 Fla. 497, 103 Am. St. Rep. 173, 33 So. 281; Flournoy v. First Nat. Bank, 79 Ga. 810, 2 S. E. 547; Davenport v. State Banking Co., 126 Ga. 136, 115 Am. St. Rep. 68, 7 Ann. Cas. 1000, 8 L. R. A. (N. S.) 944, 54 S. E. 977; Voss v. German-American Bank, 83 Ill. 599, 25 Am. Rep. 415; Highland Park State Bank v Sheahan, 149 Ill. App. 225; Second Nat. Bank v. Hill, 76 Ind. 223, 40 Am. Rep. 239; Patterson v. State Bank, 55 Ind. App. 331, 102 N. E. 880; Citizens' Bank v. Elliott, 9 Kan. App. 797, 59 Pac. 1102; Martin v. Mechanics' Bank, 3 Harr. & J. (Md.) 235; National Mahaiwe Bank v. Peck, 127 Mass. 298, 34 Am. Rep. 368; Moreland v. Peoples' Bank, 114 Miss. 203, L. R. A. 1917F, 263, 70 So. 828; Citizens' Bank v. Carson, 32 Mo. 191; National Bank of Newburg v. Smith, 66 N. Y. 271, 23 Am. Rep. 48, affirming 5 Hun 183; Bank of Alexandria v. Tourney (Tenn. Ch. App.) 52 S. W. 762; Houston v. Braden (Tex. Civ. App.), 37 S. W. 467; First Nat. Bank v. Powell (Tex. Civ. App.), 149 S. W. 1096; National Bank v. Gilvin (Tex. Civ. App.), 152 S. W. 652; Bacon v. Bacon, 94 Va. 693, 27 S. E. 576; Kirkland Land & Imp. Co., v. Jones, 18 Wash. 407, 51 Pac. 1043; Merchants' & Mechanics' Bank v. Evans, 9 W. Va. 373; Third Nat. Bank v. Harrison, 3 McC. 316, 10 Fed. 243.

the principal obligor and depositor, and notice on the part of the bank of such fraud.[15]

It is submitted that if the doctrine maintained by the second line of cases and the decided weight of authority is sound, particularly as to the second leg of the dual ground upon which the doctrine is placed, it will be equally as applicable in the case of an accommodation maker or indorser as in the case of an indorser in due course, or of a mere surety, and that the decision in Tatum v. Commercial Bank and Trust Company[16] is erroneous, under the Uniform Negotiable Instruments Act, for the reason that the Act makes no specific provisions for relief of an accommodation-maker, or of an accommodation-indorser, because of the failure of a bank holding mature or past-due negotiable paper, or at which such paper is made payable, to apply a general deposit on account of the customer-maker to the discharge of the instrument; and neither does that Act draw any distinction between the liability on an accommodation-contract and the liabiliy of an indorser in due course, and that of a surety merely, on their respective contracts, which will warrant such a distinction and favoritism on behalf of an accommodating party.

If the bank has the absolute title to and ownership of the money deposited by a customer, and is simply the debtor of the depositor to the amount of the money deposited, or of any balance in the due course of business, the general rule above discussed, and pointed out to be a practically universal rule, requiring a creditor who has in his hands means of paying his debt out of the property of the principal debtor to so pay and discharge his debt, and who failing to do so thereby releases or discharges from liability all persons secondarily liable on such obligation, does not apply. If the Alabama decision is good law as to an accommodation-maker or indorser, it is also good law as to an indorser in due course, in all probability, and assuredly so as to a surety who, like an accommodation-maker or an accommodation-indorser, merely lends the weight of his name to the instrument without receiving any of the consideration therefor.

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(15) Solomon v. Merchants' & Planters' Bank (Tex. Civ. App.), 168 S. W. 1029.

(16) 193 Ala. 120, L. R. A. 1916C, 767, 69 So. 508.

CARRIERS OF PASSENGERS—JERKING OF STREET CARS.

LAYCOCK v. UNITED RYS. CO. OF ST. LOUIS.

227 S. W. 883.

St. Louis Court of Appeals, Missouri.
April 6, 1920.

Where plaintiff had already become a passenger on a car and paid his fare, and was standing upon the back platform and was injured by reason of a jerk, it was incumbent on him to allege and prove that the jerk or lurch which caused the injury was an unusual or extraordinary jerk, and one not incident to the ordinary operation of the car.

BIGGS, C. This is a negligence case growing out of the relation of carrier and passenger. The plaintiff alleges that while he was a passenger on the Manchester line operated by the defendant, the defendant's servants in charge of said car negligently and carelessly permitted and allowed the same to move with a sudden and unexpected jerk, thereby pulling or driving the car forward with such force as to throw some one in the inside of the car against the glass entrance door, breaking the glass therein, and causing the same to strike plaintiff in the eyes, injuring him.

The car in question was of the pay-as-you-enter type. The plaintiff boarded the car at Jefferson avenue, and on account of the crowded condition of the car stood on the back platform close to the entrance door which led from the platform into the body of the car. Plaintiff testified that when the car arrived west of Vandeventer avenue and somewhere between there and Kingshighway, and as he was standing close to this entrance door, the car gave a terrific lurch, and that there was a man standing just inside of the entrance door with his back towards the door, and about 8 or 10 inches

from the door, and as the car gave the lurch, it threw this man backward off his feet, causing him to fall against the glass in the door, breaking it into many fragments, some of which fell into plaintiff's face and eyes. Plaintiff introduced a passenger on the car, who testified as to the lurch, stating that the car gave a lurch and started too fast, throwing a man on the inside against the door, breaking the glass, and causing it to fall against the plaintiff. Another witness for the plaintiff testified that as the car started up suddenly a man inside a man was thrown against the door, breaking the glass.

Defendant's evidence tended to show that, as the street car was going westwardly in the usual manner, and that just west of Vandeventer avenue and while running over a switch which intersected the track, a man was entering the car carrying bundles in his arms, and the bundles went against the door, breaking the glass; that there was no unusual movement of the car and no sudden or unexpected jerk, and that the only motion of the car was the ordinary motion necessary incident to the operation of the street car over the switch.

I. This is not one of the so-called stoppage cases, or cases where the car has been brought to a stop for the purpose of receiving passengers, and where it has started up suddenly without giving the passenger a reasonable opportunity to board the car, and by reason of the start thereby causing the passenger to fall and be injured. In those cases it is plain under the law, and this is conceded by the parties hereto, that it is the duty of the carrier to hold the car stationary until the party who intends to become a passenger has had a reasonable opportunity to board the car. In this case the plaintiff had already become a passenger on the car and paid his fare, and was standing upon the back platform. Defendant contends that in such a case it is incumbent on the plaintiff to allege and prove that the jerk or lurch which caused the injury was an unusual or extraordinary jerk, and one not incident to the ordinary operation of the street car. This we concede to be good law and good reasoning, for it is necessarily true that public conveyances, either railroad trains or street cars, necessarily jerk to some extent in the ordinary operation of the conveyances. Defendant asserts that the petition in a case of this character, where the injury was caused to the passengers as the car was going upon its way, should specifically state that the jerk was an unusual one. The petition in this case does not contain that specific averment, but it does say that the defendant negligently permitted and allowed the car to move with a sudden and unexpected jerk, thereby pulling or driving the car forward with such force as to throw some one in the inside of the car against the glass entrance door, breaking the glass therein, and causing the same to strike plaintiff in the eyes and face. We think that from this allegation the jury could infer or presume the fact to be that such a jerk as described in the petition was an unusual or extrordinary jerk, and was not one of the ordinary jerks or lurches which is incident to the operation of the car. The language of the petition is equivalent to saying that the jerk was unusual. To say otherwise would equal saying that such a jerk which produced such a result, viz., throwing some one in the inside of the car against the glass door with such force as to break same, was one of the ordinary jerks incident to the operation of the car.

We hold, in a case where the passenger is injured by reason of a jerk or lurch of the car after the car is on its way, and after the passenger has reached a place of safety in the car, either by securing a seat or by standing in the car or on the platform where he stands voluntarily or by reason of the crowded condition of the car, that the petition must in fact allege that the jerk or lurch was unusual or extraordinary, or it must allege such facts which show that the lurch or jerk was necessarily unusual or extraordinary. We think the petition in the present case is sufficient, and so rule. This is especially true after verdict, and where, as here, the petition is attacked for the first time in this court.

The cases of Bartley v. Street Railway, 148 Mo. 124, 49 S. W. 840, Saxton v. Railroad, 98 Mo. App. 494, 72 S. W. 717, and Bobbitt v. Street Railway, 169 Mo. App. 424, 153 S. W. 70, relied on by defendant, do not contravene the holding here.

In the Bartley Case the charge was that the gripman of a cable car "so carelessly and negligently operated said gripiron as to cause said car to jerk and lurch with such force that it broke the plaintiff's hold and threw him on the paved street with great force." The plaintiff in that case testified that the car gave a lurch, and he fell. Another witness said the car "gave a little kind of a sharp jerk," and that the gripman did nothing to make it jerk, and that the slack in the cable rope caused the car to jerk. The petition was not attacked, but the court held that plaintiff's evidence was insufficient to make a prima facie case, and that in such a case it must affirmatively appear that the jerk

was an extraordinary or unusual one. The evidence only tended to show that the jerk was one of the usual jerks incident to the operation of cable cars.

In the Saxton Case the negligence charged was that the defendant caused its train to jerk suddenly and quickly and with great force, so that plaintiff was thrown with great force, etc. While the court questions the sufficiency of this allegation and says that "it seems to us that it should have been alleged that the jerk was extraordinary, or more than a usual and inevitable incident to the acceleration of the speed of the train under the circumstances," the ruling is based on the evidence, as the court says (98 Mo. App. loc. cit. 504, 72 S. W. loc. cit. 720):

"There is no evidence tending to show that the course pursued by defendant in the movement of its train was unusual, nor that the jerk, if it occurred as plaintiff proved in the taking up of the slack, was unusual, and therefore there was nothing shown to indicate any act or omission not incident to the movement of the train at the time, or indicating any fault for which there was liability."

In the Bobbitt Case the charge was that while the plaintiff was preparing to alight from the car and after the speed of the car had been reduced to a slow rate, the defendant's employees without bringing the car to a stop, negligently, suddenly, and violently started the same forward at an increased speed, which caused plaintiff to be thrown from the car. The court held that, in the event the jerk complained of was due to the car merely coming to a stop and was not an unusual or extraordinary jerk, in that even the defendant would not be liable.

In the case at bar plaintiff's testimony described the movement of the car at the time as a terrific lurch, and the evidence on behalf of plaintiff tended to show that at the time the car lurched that a passenger inside of the car was thrown against the entrance door with such force and violence as to break the glass into many fragments. The petition charges that this movement of the car was negligently caused by the defendant's servants, and that the jerk was sudden and unexpected, and such as to produce the said result.

It seems to us that in the case of electrically propelled street cars the allegation to the effect that the defendant negligently and carelessly permitted the car to move with a sudden and unexpected jerk, thereby pulling or driving the car forward with such force as to throw some one in the inside of the car against the glass entrance door, breaking the glass therein, is sufficient.

By reason of the conclusion herein reached, it is recommended that the judgment be reversed, and the cause remanded. However, the Commissioner deems the decision herein, holding that the giving of said instruction on the measure of damages is reversible error, to be contrary to the decision of the Kansas City Court of Appeals in Campbell v. Chillicothe, 175 Mo. App. 436, loc. cit. 440, 162 S. W. 309, in respect to the effect to be given the ruling of the Supreme Court in the Shinn Case, supra. It is therefore recommended that the cause be certified to the Supreme Court for final determination.

PER CURIAM. The foregoing opinion of BIGGS, C., is adopted as the opinion of the Court.

Our order accordingly is that the judgment of the circuit court be reversed, and the cause remanded; but, as we deem the decision herein contrary to the decision of the Kansas City Court of Appeals in Campbell v. Chillicothe, supra, for the reasons stated by the Commissioner, the cause is certified to the Supreme Court for final determination.

NOTE—*Injuries to Street Car Passengers Due to Jerks and Jolts of Cars.*—This annotation is intended to be confined to injuries to passengers not boarding or alighting from cars, in which situation the mere starting of the car alone may amount to negligence.

While carriers must use a very high degree of care to avoid injuring passengers through sudden jerks, jars, or lurches of the cars—Birmingham R., L. & P. Co., v. Yates, 169 Ala. 381, 53 So. 915—still the mere fact that a car started with a jerk and a passenger fell and was hurt, does not make out a case of negligence against the company. The proof must go further and show that the start or jerk was unusually sudden and violent. Boston El. R. Co. v. Smith, 94 C. C. A. 84, 168 Fed. 628, 23 L. R. A. (N. S.) 890; Ewing v. Wichita R. & L. Co., 91 Kan. 388, 137 Pac. 940; Louisville R. Co. v. Wilder, 143 Ky. 436, 136 S. W. 892; Bobbitt v. United Rys. Co., 169 Mo. App. 424, 153 S. W. 70; Wright v. Sioux Falls Tr. System, 28 S. D. 379, 133 N. W. 696.

"To make out a case of negligence on the part of a defendant railway company in such a case, the plaintiff must go further, and introduce evidence that the jerk in question was due to a defect in the track or to negligence in the operation of the car." McGann v. Boston El. R. Co., 199 Mass. 446, 85 N. E. 570, 18 L. R. A. (N. S.) 506, 127 Am. St. Rep. 509.

"It is a matter of common knowledge that cars will lurch in rounding curves, and to recover for an injury to a passenger therefrom it must appear that such lurch was caused by some negli-

gent act or omission on part of defendant." Cull v. Union Ry. Co., 192 App. Div. 649, 183 N. Y. Supp. 275, quoting from Delaney v. Buffalo R. & P. R. Co., 266 Pa. 122, 109 Atl. 605.

In other words, aside from the situation of the passenger, whether a jerk of a car, whereby a passengers was injured, will sustain a charge of negligence, depends on the violence of the jerk. Birmingham R., L. & P. Co., v. Mayo, 181 Ala. 525, 61 So. 289.

Where a car was not sufficiently slowed down in rounding a curve, and a passenger standing on the platform was thrown out by the consequent jolting, the company was held liable. McMahon v. New Orleans R. & L. Co., 127 La. 544, 53 So. 857, 32 L. R. A. (N. S.) 346.

The stopping of an elevated car so suddenly as to throw passengers down or against portions of the car, if not necessary to the successful operation of the car, is sufficient to justify a finding of negligence on the part of the company. Starkman v. Interborough R. T. Co., 83 Misc. 62, 144 N. Y. Supp. 780.

In Nebraska it is held that the rule that the unbending test of negligence is the ordinary usage of business in which defendant was engaged, does not apply to the question of negligence growing out of a sudden and violent jerking and starting of a street car, by which a passenger was injured. Nocita v. Omaha & C. B. St. R. Co., 89 Neb. 209, 131 N. W. 214.

In Wisconsin the rule has been stated that under the modern appliances with which electric cars are generally equipped, it is not necessary in the proper handling of such cars to start them violently with a jerk. Otto v. Milwaukee Northern R. Co., 148 Wis. 54, 134 N. W. 157.

ITEMS OF PROFESSIONAL INTEREST.

PROGRAM OF THE MEETING OF THE ALABAMA BAR ASSOCIATION.

The forty-fourth annual meeting of the Alabama Bar Association will be held at the Tutwiler Hotel in Birmingham, April 29th and 30th, 1921.

The President's address will be made by Mr. J. K. Dixon, of Talladega. The following papers will also be read: "The Influence of the Bar," by Mr. L. M. Mosely, of Union Springs; "Does Alabama Need a New Constitution?" by Mr. Thos. E. Orr; "The Law's Delays," by Mr. John D. Bibb, of Anninston; "Does the Volstead Act Supersede the Present State Prohibition Law?" by Mr. G. O. Chenault, of Albany; and "The Strange Case of Erwin Pope," by Hon. Emmet O'Neal, of Birmingham. The annual address will be delivered by Mr. L. E. Jeffries, of Washington, D. C., on "The Philosophy of the Law."

REPORT OF THE MEETING OF THE FLORIDA BAR ASSOCIATION.

The annual meeting of the Florida Bar Association was held in Jacksonville, March 28th and 29th, 1921. Hon. C. C. Andrews, of Orlando, was elected president of the association; Mr. Herman Ulmer, of Jacksonville, secretary, and Mr. P. S. May, of Jacksonville, treasurer.

In addition to a number of interesting addresses the time of the convention was employed most profitably in a discussion of a proposed act to regulate the practice of law. The discussion took the shape of a bill which will be presented at a regular session of the Florida legislature. The full draft of this measure appears in this issue of the Central Law Journal. The bill, as originally proposed, provided for the incorporation of the state bar, as recommended by the Conference of Bar Association delegates at the last meeting of the American Bar Association in St. Louis. The incorporation feature, however, was finally eliminated after a long debate.

The Jacksonville Public Library was selected as the official depository of the records of the State Bar Association. The Librarian agreed to classify all the books, records and other matters of a historical nature of interest to the bar of Florida and to hold them for the use of members and correspondents throughout the United States. The Library will also be the distributing agent for the association in exchanging reports of conventions and other papers.

A BILL TO REGULATE THE PRACTICE OF LAW IN FLORIDA.*

Section 1. For the purpose of the more efficient administration of justice, the bar of the state of Florida shall be charged with the power and duty, acting through its board of governors, as hereinafter provided, of supervising and regulating the admission to practice, and the conduct of, attorneys at law of this state, as hereinafter provided.

Lawyers will be interested in this bill which is introduced in the Florida Legislature. It was approved at the last meeting of the Bar Association on March 29th. It is an attempt to follow the recommendation of the delegates of a Section of the American Bar Association to the effect that each State bar association be incorporated or organized to regulate the practice of law. The Florida Bar Association eliminated the incorporation feature.

Sec. 2. All attorneys at law of this state are hereby declared to be officers of the courts of the state and as such are declared to be members of the state bar and shall be subject to the provisions and requirements of this act.

Sec. 3. The membership of the state bar shall be composed of all attorneys at law of this state, as well as those hereafter duly admitted to the practice of law as provided in this act.

Sec. 4. The board of governors of the state bar as hereby created shall issue certificates of membership in the state bar to those entitled to same upon payment of the license fee hereinafter provided for.

Sec. 5. The state bar shall be governed by a board of governors which shall be composed of nine members, who shall be appointed by the governor of the state from the members in good standing of the state bar, two from each congressional district as now or may be hereafter constituted and one from the state at large. In appointing the board of governors, the governor of the state shall take into consideration the recommendation of a majority of the members of the said bar, although such recommendation shall not be binding upon the governor. For the purpose of determining the choice of the members of the bar for appointment to the board of governors, an advisory nomination election shall be held at such reasonable time before the time provided in this act for the appointment of a board of governors as the board may designate. For the purpose of ascertaining the choice of members for appointment to the board of governors, the board shall send out suitable ballots to each member of the state bar, and the result of such advisory election shall be transmitted by the board to the governor of the state before the time fixed for the appointment of members of the board of governors under the provisions of this act; provided, such advisory election to determine the choice of the membership for appointment on the first board of governors appointed hereunder may be conducted by the voluntary state bar association existing at the time this act takes effect and all practicing attorneys of the state shall be given the privilege of voting in such election.

Sec. 6. The first board of governors appointed under this act shall be appointed for the following terms: Three members shall be appointed for a term of one year; three for a term of two years, and three for a term of three years, and after each of such terms shall expire, three members shall be appointed by the governor for terms of three years.

Sec. 7. The board of governors shall elect by ballot from its own membership one who shall be designated as chairman of the state bar and as such shall preside at all meetings of the bar and of the board of governors. The board shall also elect a vice-chairman, who shall act in the absence of the chairman. The terms of office of the chairman and vice-chairman shall be one year.

Sec. 8. The board shall select a secretary, who shall keep the records and documents of the board and of the state bar, except those pertaining to finances, and shall perform such other duties as may be imposed upon him by the board. The secretary shall not be a member of the board of governors and shall be appointed for a term of two years, unless sooner removed by the governor on the recommendation of the board, and may be allowed a reasonable compensation by the board for his service.

Sec. 9. The board shall also recommend to the governor a suitable person to be appointed treasurer of the state bar, who shall be charged with the duty of keeping the accounts and finances under the direction of the board of governors, and whose appointment shall be for two years, unless sooner removed by the governor on the recommendation of the board. He shall be paid a salary of three hundred dollars ($300) and shall give a bond in the sum of five thousand dollars ($5,000) with some surety company authorized to do business in this state, the fee therefor to be paid out of the funds of the board.

Sec. 10. The board may provide for such committees, with such duties as may be deemed expedient, for the purpose of assisting in administering the provisions of this act except as to such matters as are herein required to be performed by the members of the board of governors personally.

Sec. 11. The board of governors shall be charged with the executive functions of the state bar and the proper enforcement of the provisions of this act. It shall have a common seal authenticating all its formal acts and orders.

Sec. 12. The board shall act upon all applications for membership in the state bar and order the issuance of certificates of membership; receive complaints against members; make reports and recommendations to the state bar at the annual meetings to the supreme court of the state on matters pertaining to the administration of justice in the

state; and shall annually report to the governor and the attorney general the condition of litigated business in each of the judicial circuits of the state, which report shall be embodied in the report of the attorney general to the legislature; and generally shall act for the state bar in all matters pertaining thereto.

Sec. 13. The board shall prepare and furnish such blank forms for application and certificate of membership, forms for complaints, orders, etc., as may be necessary for the proper enforcement of this act.

Sec. 14. With the approval of the supreme court, the board shall have power to formulate rules of professional conduct for all members of the bar.

Sec. 15. The board shall have power to determine the qualifications for admission to practice law in this state and shall examine candidates as to their qualifications and recommend such as fulfill the requirements imposed, to the supreme court for admission to practice under this act; provided, however, that until this power is exercised by the board, the qualifications for admission to practice under this act shall be the same as those now prescribed by the supreme court for admission to practice law in this state and shall be vested in the supreme court as now provided by law. Provided, that nothing in this act shall be construed to repeal or affect section 2546 of the Revised General Statutes of Florida, 1920, relative to the admission of graduates of certain law schools of the state without examination as to legal attainments, or section 2545 thereof, relating to the admission to practice without examination of attorneys admitted in other states. The examination for legal fitness conducted by the board shall be thorough and comprehensive, and it shall also, before recommending any candidate for admission, fully ascertain his moral fitness to be a member of the bar.

Sec. 16. The board of governors shall hold regular quarterly meetings on the third Monday of June, September, December and March of each year. Five members of the board shall constitute a quorum. Special meetings may be held on written request of three members thereof, stating the necessity and purpose of the call, and the secretary shall notify each member of the board at least five days before the time fixed in the call for such special meeting.

Sec. 17. All necessary expenses of the board of governors, including traveling expenses, expenses incurred in disbarment proceedings and in holding examinations for admission to practice, as well as all other expenses incurred in the discharge of the duties imposed upon them by this act, shall be paid by the treasurer on proper vouchers therefor. The approval of the board of governors shall be final as to the propriety of any item of expenditure.

Sec. 18. Each member of the association shall on October 1st of each year, pay to the state treasurer an annual license fee or tax of twenty-five dollars. Of this amount the treasurer of the state shall retain ten dollars as state license tax, shall pay to the county treasurer of the county of the residence of the member five dollars and shall transmit to the board of governors ten dollars, which shall be used under the direction of the board in the proper administration of this act. No other or further license fee or tax shall be imposed for the privilege of practicing law in the state. Any surplus which shall remain in the hands of the treasurer of the state bar at the end of each fiscal year shall be paid over into the state treasury and be converted into the general revenue fund. No license to practice law shall be issued by the state treasurer until such annual license fee has been paid by the member, accompanied by a certificate of membership of the state bar.

Sec. 19. Certificates of membership shall be issued on or before October 1, 1921, to take effect as of the date this act becomes effective and no person shall be permitted to practice law in this state, or hold himself out to practice, until he shall hold a certificate of membership in the state bar, and, on or before October 1st of each year, shall have paid the license tax hereby fixed.

Sec. 20. The state bar shall hold an annual meeting of its members, beginning the second Monday in March of each year, at such place as may be designated by the board of governors. At such meeting, the said bar shall receive reports of the proceedings of the last annual meeting and reports of proceedings had by the board of governors since the last annual meeting; and shall receive and act upon other matters of interest pertaining to the efficiency and development of the administration of justice and to the legal profession generally. The board of governors shall, through its chairman, report and recommend to the state bar in annual session such matters of interest to the profession as it may deem proper and expedient. Special meetings of the state bar may be held at such times as may be called by the chairman and

secretary on written request of thirty members, stating the time and purpose of the meeting.

Sec. 21. Upon complaint made for disbarment to the board of governors or any member thereof, or upon investigation made by the board or any member or officer thereof, affecting the conduct of a member of the association, the board shall investigate the same and if a majority of the members of the board are satisfied that the matter complained of is one which should be presented to the court for prosecution, the chairman of the board of governors shall designate three members of the board, who shall in the name of the state of Florida institute disbarment proceedings in the proper circuit court and see that the same are promptly brought to trial, in which said trial the proceedings shall be conducted by one or more of the committee so appointed; but this shall not prevent judges now so authorized by law to order the institution of disbarment proceedings to exercise such right. The proceedings hereby authorized are to be held and taken as cumulative to any existing provisions of law.

Sec. 22. It shall be unlawful for anyone to practice or assume to act or hold himself out to the public as qualified to act or carry on the calling of an attorney at law, without having first obtained the certificate mentioned in the fourth section of this act. This shall not exclude attorneys from other states from appearing in particular cases when under the rules of comity of such other states attorneys at law of Florida are similarly permitted to appear.

Sec. 23. All acts or parts of acts in any way conflicting with the provisions of this act are hereby expressly repealed and this act shall be deemed a remedial act, designed to facilitate the administration of justice in the courts of the state and as such shall be liberally construed to effectuate its intent and purpose.

BOOKS RECEIVED.

Preliminary Economic Studies of the War. Edited by David McKinley, Professor of Political Economy, University of Illinois, Member of Committee of Research of the Carnegie Endowment for International Peace. Government War Contracts, by J. Franklin Crowell, Ph.D., LL.D. New York. 1920.

HUMOR OF THE LAW.

"Why are you standing here so long?" asked the police officer.

"I'm thinking of going into this restaurant to get a meal," replied the stranger.

"Well, why don't you go in, then?"

"I've been waiting to see if any men with red noses go in there first."—*Washington Star.*

In writing a brief, making the point that a congenitally overly voluble trial court by his remarks prejudiced the case, citation was made for opinion by Judge Gary, in Kane v. Kinnare, 69 Ill. App. at page 83, that—

"One of the greatest difficulties of a *nisi prius* judge is to keep his mouth shut. I had 25 years' experience of it."

The linotype operator rendered it as follows:

"One of the greatest difficulties of a *nice, pious* judge is to keep his mouth shut," etc.—*The Docket.*

An old Southern negro was asked by the proprietor of a store how he happened to need credit when he'd such a good cotton crop.

"De ducks got about all dat cotton sah," was the mournful reply.

"What do you mean the ducks got it?"

"Well, you see," explained the old man. "I sent dat cotton up to Memphis an' dey deducts the freight, an' dey deducts the storage charges, an' dey deducts the commission, an' dey deducts the taxes—yes, sah, de ducts got 'bout all dat cotton an' dat's why I'm here."—*Boston Transcript.*

Bad blood between Biggs and Jiggs in the mountain section of northeast Pennsylvania came apace, when Biggs put up a fence which blocked an old cowpath, and Jiggs' cattle were called upon to detour. Jiggs tore the fence down. Biggs put it up again; then Jiggs demolished it once more. Biggs went to an attorney and asked what he could do. The lawyer said, "It is trespass. I can sue him for you. The cost will be about $10." Biggs produced a greasy wallet, and $20 in currency, and said: "I want you to law that sucker. I want him lawed a good $20 worth. As soon as you get the case started call him a blankety-blank"—this volley included about every banned epithet in the English language, any of which would have meant contempt proceedings by the court. "After that," continued Biggs, "begin to warm up gradual, and leave Jiggs know that when I law a man I law him proper."

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Adverse Possession**—Mistake of Fact.—Possession for 40 years by plaintiff and his predecessors of a strip on plaintiff's boundary up to the line of a turn row and ditch gave plaintiff title, where such possession did not originate in an admitted possibility of mistake, but plaintiff and his predecessors believed such line was the true line, even though such belief as to its correct location originated in a mistake in fact; it being immaterial what plaintiff or his predecessors might or might not have claimed had they known they were or might be mistaken.—Hopkins v. Duggar, Ala., 87 So. 103.

2. **Bailment**—Liability of Dry Cleaners.—Dry cleaners, with knowledge of danger of ignition of gasoline fumes from static electricity produced by a washing machine, were negligent and liable for costumes placed in a drying room near the washing machine.—Rife v. Buchheim, N. Y., 186 N. Y. S. 519.

3. **Bankruptcy**—Advice of Counsel.—Where L. was indicted for false swearing in connection with a claim in bankruptcy on a receipt for cotton, and D., who had previously filed a claim for the same cotton, testified that in so doing he acted on the advice of counsel, the conversation with counsel was properly excluded as incompetent; the truth or falsity of D.'s proof of claim not being in issue.—Lybrand v. United States, U. S. C. C. A., 269 Fed. 601.

4.——Composition.—Bankruptcy Act, § 12a (Comp. St. § 9596), providing that in compositions before adjudication the court shall call a meeting of the creditors for the allowance of claims, examination of the bankrupt, etc., contemplates proof at the meeting of claims of such creditors as are to pe counted when the confirmation of the composition is to be considered, so that claims filed after the creditors' meeting closes, though regular in form and filed before the petition for confirmation is filed, cannot be counted in determining whether a majority of the creditors agreed to a composition before adjudication.—In re Chinese Fur Importers, U. S. D. C., 269 Fed. 669.

5. **Banks and Banking**—Delivery of Check.—Depositor who delivered checks to third person in the belief that he was the person named as payee, without requiring him to identify himself, could not recover loss sustained from bank on ground that bank cashed the checks with indorsement in payee's name forged by third person, the depositor having intended that such third person should receive the proceeds of the checks, and the loss sustained being due to his negligence or mistake.—Cureton v. Farmers' State Bank, Ark., 227 S. W. 423.

6.——Power of Congress.—The creation of the federal land banks and joint-stock land banks authorized by Act July 17, 1916 (Comp. St. §§ 9835a-9835z), as amended by Act January 18, 118 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, § 9835w), was within the creative power of Congress, in view of section 6, authorizing the designation of such banks as depositaries of public money and authorizing their employment as financial agents of the government, and the provisions authorizing such banks to buy and sell United States bonds, though they may be intended to facilitate the making of loans upon farm security at low rates of interest, and though they have acted as federal agents to a limted extent only, and have banking powers of a limited character.—Smith v. Kansas City Title & Trust Co., U. S. S. C., 41 Sup. Ct. 243.

7. **Bills and Notes**—Right to Sue.—In an action on a note and lien the fact that plaintiff is not the real owner and holder of the note is not a matter of defense, either in bar or in abatement, and where the note itself shows the rights of plaintiff to sue at law, an inquiry as to whether there was an equitable owner aside from and behind the legal ownership is not essential to the right of defendants, unless there is a matter of defense between defendants and equitable owner, and even if it does appear, such defense will not exclude the note and indorsements thereon as evidence.—El Paso Townsite Co. v. Watts, Tex., 225 S. W. 709.

8. **Brokers**—Right to Commission.—Where a trustee employed a broker to find a purchaser for land, the broker not having knowledge of the trust, the broker became entitled to compensation on furnishing a purchaser, and it was immaterial that the agreement between the purchaser furnished and the trustee showed that the acts of the trustee were done at the instance and for the benefit of another, though such contract stated that the commission was to be paid only if the sale was consummated, and a letter written by defendant fixed the day of payment "on settlement by your purchaser."—Aber v. Pennsylvania Co. for Insurances on Lives and Annuities, Pa., 112 Atl. 444.

9. **Carriers of Goods**—Assignment of Bill of Lading.—The assignment of a bill of lading to

a bank advancing money to the shipper with which to fill the consignee's order, carried with it the control of the goods, with the right to stipulate for a note before delivery of the bill to the consignee.—State Bank of Avon v. Luff, Pa., 112 Atl. 452.

10.——Perishable Goods.—Notwithstanding a bill of lading stipulates that property destined to be taken from a station, wharf or landing at which there is no regularly appointed agent shall be entirely at the risk of the owner after unloading from cars or vessels, the carrier will not be relieved thereby from his gross negligence in unloading in the mud and rain at an unreasonable hour of the night goods consigned to such point, when the consignee is not present or could not reasonably be expected to be present, and when it is manifest that such goods because of their character will be certainly destroyed or rendered useless by the elements.—Annese v. Baltimore & O. R. Co., W. Va., 105 S. E. 807.

11. **Charities**—Valid Trust.—A bequest of money to a town "on condition that said town shall care for properly and keep in repair forever the lot in the cemetery, in the middle of said town, in which my mother lies buried and in which I also expect and desire to be buried," created a valid trust which the town had authority to accept, under Pub. St. 1901, c. 40, § 5, as amended by Laws 1901, c. 83, Pub. St. 1901, c. 40, § 4, and Laws 1911, c. 32.—Petition of Tuttle, N. H., 112 Atl. 397.

12. **Constitutional Law**—Due Process.—Laws 1919, c. 315, providing for state loan to settlers and authorizing the creation of debt and levy of taxes, does not amount to a deprivation of property without due process of law within the meaning of Const. art. 6, § 2.—Wheelon v. South Dakota Land Settlement Board, S. D., 191 N. W. 359.

13. ——Legislative Authority.—In view of Const. 1902, § 162, the Legislature had constitutional authority in the exercise of the state's police power to make a classification in Employer's Liability Act, based on a distinction between employees of corporations and of partnerships or private persons engaged in the same or similar business, and between employees of railroads which are common carriers and of parties operating railroads as incidental to private business, and such classification, being within the legitmate erercise of legislative discretion, is valid in the purview of the equal protection clause of Const. U. S. Amend. 14.—Karabalis v. E. I. Du Pont De Nemours & Co., Va., 105 S. E. 755.

14. **Contracts**—Change in Contract.—Where contract to erect a house for a specified price was changed by the parties in a way beneficial to the owner and detrimental to the contractor, such changes were legal consideration for the owner's promise to pay the contractor $1,200 additional.—Brown v. Owens, N. C., 105 S. E. 817.

15. **Corporations**—Breach of Contract.—Where a contract between a nonresident plaintiff and a foreign corporation had been made and breached, so that a cause of action had accrued prior to the appointment of an agent for defendant corporation for the service of process, jurisdiction was not acquired by service on the agent, where the corporation had theretofore withdrawn from the state and the agent had resigned, notwithstanding that final payment on the contract had been made after the agent's apointment and resignation and after defendant's withdrawal from the state.—Keller v. Southern Colonization Co., Minn., 181 N. W. 208.

16.——Cancellation of Stock.—A corporation canont divide itself into several parts so that each segment shall constitute a separate entity in dealing with the public.—Lebens v. Nelson, Minn., 181 N. W. 350.

17.——Note.—A note "signed with the corporation's name by" its president, who was also a director and general manager, is issued in the name of the corporation and is prima facie entitled to credence.—Citizens' Bank v. Public Drug Co., Iowa, 181 N. W. 274.

18.——Ratification of Directors.—Where the acts of directors in a projected electric railroad enterprise in engaging the services of plaintiff attorneys were fully ratified and approved by all the associates in the enterprise, members thereof were bound by such ratification, even if they did not originally assent to the employment of plaintiff attorneys; there being evidence that the attorneys were acting for the directors and the directors acting for the associates.—Storey v. Bickford, Mass., 129 N. E. 714.

19. **Electricity**—City Ordinance.—City of Milwaukee Ordinance of 1890, permitting electric companies, previously prohibited by ordinances from consolidating, to consolidate, in consideration of the consolidated company furnishing electricity to city free of charge, held void, since the permit to consolidate was no consideration for the agreement to furnish free current, in view of the invalidity of the prior ordinances attempting to prevent the consolidation of the companies, such regulation being beyond the city's police power, and since the city had no power to stipulate for free service.—Milwaukee Electric Ry. & Light Co. v. City of Milwaukee, Wis., 181 N. W. 298.

20.——Intermeddler.—A millwright, familiar with electricity, who discovered defendant power company's wires fallen into the street where they were flaming, and who first kicked them to separate them, but, thinking of the danger to children, went back and attempted to cut the wires with a pair of pinchers, around which he wrapped his handkerchief, so that he received injury, was an intermeddler with the power company's property, and cannot recover.—Croteau v. Twin State Gas & Electric Co., N. H., 112 Atl. 397.

21. **Eminent Domain** — Public Crossing. — Where a railroad is operated over a street that divides the city into two parts, so that it is impossible for the public to go from that part of the city lying on one side of the street to that part lying on the other side without passing over the tracks and right of way of the railroad, the public has a right to cross the railroad tracks and right of way at any point unless prohibited by law, and such crossing by the public is not an appropriation "of private property or right of way."—City of De Funiak Springs v. Louisville & N. R. Co., Fla., 87 So. 47.

22. **Fraud**—Secret Knoweldge.—Where a purchaser, having secret knowledge of valuable mineral deposits in the waters of a private lake on land purchased from a vendor who considered the waters of no value, is sued by the latter for fraud resulting in the sale of the land, the materiality of the deception charged does not depend on its effect on the purchase price, but upon its influence on the mind of the vendor in entering into the contract of sale.—Long v. Krause, Neb., 181 N. W. 372.

23. **Gas**—Rate Contracts.—The rate contracts of public utilities are subject to legislative supervision and abrogation, except where the renunciation of such right of the state is evidenced by the most clear and unequivolent terms, so that contract fixing the rates to be paid by natural gas distributing companies to the supply company were abrogated by Laws Kan. 1911, c. 238, § 30, and by the orders of the Public Utilities Commission and of the Court of Industrial Relations of that state, establishing different rates.—Landon v. Court of Industrial Relations, U. S. D. C., 269 Fed. 423.

24. **Gifts**—Inter Vivos.—Where depositor deposited money "for use of L.," but authorized bank to pay out funds only on check signed by himself and L., there was no gift inter vivos, the gift not being completed, in view of depositor retaining dominion over the money.—Martin v. First Nat. Bank, Mo., 227 S. W. 656.

25. **Homestead**—Intent to Return.—In a proceeding to set aside an execution levy and sale of land claimed as homestead, the fact that some of plaintiff's household furniture was left in the house and their farming tools with their neighbors, when moving to town temporarily to earn money to pay debts, has some tendency to support their claim of intention to return, and that the furniture was not as valuable and useful as some taken, goes to the weight, and

not the admissibility, of the evidence.—Davis v. Neihardt, Mich., 181 N. W. 177.

26. **Insurance**—Extraterritorial Effect.—Employee of pipe line contractor, hired in Texas, whose work took him into several states other than Texas, having been placed in charge of work in the Caddo oil field, including a part of Louisiana, and Marion and Panola counties, Tex., in view of such facts and others, held a Texas employee of the contractor when injured in Louisiana in his work of superintendence, and under the protection of the contractor's policy.—Home Life & Accident Co. v. Orchard, Tex., 227 S. W. 705.

27.——Reformation.—Insured having elected to pursue his remedy by an action at law upon a fire policy as it was written, he thereby elected to treat it as embodying the contract, and cannot subsequently deny the fact and bring an action for reformation.—Royal Insurance Co. v. Stewart, Ind., 129 N. E. 853.

28.——Right of Action.—Where property is insured, and a mortgage given by the insured the owner) covering the same property, and to the policy is attached a New York standard mortgagee clause, with loss, if any, payable to the mortgagee "as to the interest of the mortgagee only therein," the mortgagee cannot, under the laws of Georgia, by virtue of that clause, maintain an action at law in its own name for a total loss under the policy, when the amount of its debt is less than the amount of the insurance, even though it be alleged that the suit is brought with the consent of the insured, and that the plaintiff is the appointee of the insured to collect the policy.—Equitable Fire Ins. Co. v. Jefferson Standard Life Ins. Co., Ga., 105 S. E. 818.

29. **Intoxicating Liquors**—Insufficient Evidence.—In prosecution for transporting intoxicating liquor into the state, contrary to the Reed Amendment (Comp. St. 1918, Comp. St. Ann. Supp. 1919, §§ 8739a, 10387a-10387c), evidence that the defendant was a Pullman car porter on a run extending through the state, and that the liquor was found in his possession on the car, held insufficient to warrant the inference that the liquor was destined for points within the state, and therefore insufficient to sustain a conviction for violating the Reed Amendment.—Preyer v. United States, U. S. C. C. A., 269 Fed. 381.

30.——Prima Facie Case.—Evidence on prosecution for violation of local option that the liquor was "beer" makes out a prima facie case of it being intoxicating.—State v. Jackson, Mo., 227 S. W. 646.

31.——State Law.—Dean Law, § 1, making it illegal for any person to possess within the state any equipment for making liquor capable of producing intoxication, is not unconstitutional nor in contravention of the Volstead Act.—Banks v. State, Tex., 227 S. W. 670.

32.——Unlawful Use of Vehicle.—The unlawful use of a vehicle to convey intoxicating liquors by one in possession of such vehicle and using same does not forfeit the right of the owner to claim and retain such vehicle when it appears that same was so unlawfully used without the consent, fault, or knowledge of the owner.—Rouse v. State, Okla., 195 Pac. 498.

33. **Landlord and Tenant**—Constructive Eviction.—The fact that odor of onions escaped from a basement into a motion picture theater was not a constructive eviction of the tenant operating the motion picture theater, either partial or whole, where the tenant continued to pay rent and remained in possession.—Toy v. Olinger, Wis., 181 N. W. 295.

34. **Master and Servant**—Death of Adult Son.—Where an adult son lived with his parents, paying them his board and lodging and contributing nothing else to the family purse excepting presents, made payments amounting to $445 upon a home to the family, as he had agreed to do if his father would purchase one, his parents are not entitled, under the Workmen's Compensation Act, to an award for his death.—Wisconsin-Minnesota Light & Power Co. v. Industrial Commission, Wis., 181 N. W. 311.

35.——Employers' Liability Act.—That a yard conductor had been operating an engine switching cars loaded with interstate freight and empties destined to points beyond the state, which movements had been completed before his injury in a collision, and his next movement would have been moving an empty for express people, was not enough to bring him within the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), even if such empty was to carry interstate freight.—Patterson v. Director General of Railroads, S. C., 105 S. E. 746.

36.——Employment of Minor.—A minor who falsely represents herself to be over 16 years of age, for the purpose of securing employment in a manufacturing plant, is not estopped, in an action against such employer to recover damages for personal injuries, from showing that she was under the age at which the statute permitted her to be employed in such a plant.—Ransom v. Nunnally Co., Ga., 105 S. E. 822.

37.——Minor Illegally Employed Not An "Employee."—A minor under 15 years, whose employment by a lumber company at its sawmill was illegal and made punishable by Acts 1917, c. 59 (Vernon's Ann. Pen. Code Supp. 1918, art. 1050e), was not an "employee" within the Workmen's Compensation Act (Acts 1917, c. 103) § 121 (Vernon's Ann. Civ. St. Supp. 1918, art. 5246—30), to entitle his mother to compensation for his death.—Galloway v. Lumbermen's Indemnity Exchange, Tex., 227 S. W. 536.

38.——Test of "Employment."—Under the Workmen's Compensation Act (G. L. 5758, subds. 1, 5), defining "employer" and "employment," the true test of employment is whether the work being done pertains to the business, trade, or occupation of the claimed employer carried on by it for pecuniary gain; and, if so, the fact the work is being done through the medium of an independent contractor does not relieve the employer from liability.—O'Boyle v. Parker-Young Co., Vt., 112 Atl. 385.

39. **Municipal Corporations**—"Governmental Functions."—Ordinarily, a municipality is engaged in the performance of "governmental functions" when it is looking after the peace, health, and well-being of the citizens of the state, and is not so engaged when it is building or repairing roads or streets.—Whiteside v. Benton County, Wash., 195 Pac. 519.

40.——Negligence.—Where pedestrian crossed the street and on stepping on outer edge of the opposite sidewalk slipped, no negligence on the part of the city could be predicated on the fact that it permitted the maintenance of a canopy over the sidewalk and that the water necessarily ran off from the canopy at its outer edge, causing the dampness there resulting in glazed condition; the canopy serving to protect the sidewalk, which at that point was clear and dry except for the slight dampness at the outer edge.—Maine v. City of Des Moines, Iowa, 181 N. W. 248.

41.——"Property Used by Railroad in Its Ordinary Business."—A power plant owned and operated by the Boston & Maine Railroad in connection with the Portsmouth Electric Railway, which is owned and operated by the Boston & Maine Railroad in the city of Portsmouth and other towns, was not "property used by a railroad in its ordinary business," within the meaning of Laws 1911, c. 169, § 24, and an assessment of taxes made by the city of Portsmouth was valid; it being probable that by "ordinary business," as used in section 24, is intended real estate not used immediately in the transportation business, or that the Legislature used it in that section in the sense in which it was used in Pub. St. 1901, c. 55, § 6.—Boston & M. R. R. v. City of Portsmouth, N. H., 112 Atl. 394.

42.——Traffic Regulations.—The mere failure to obey a traffic regulation is not per se negligence; that is, failure to observe it is not necessarily a contributing cause to the accident. Whether in a given case it is or is not is a matter to be determined by a jury.—Baker v. Fogg & Hires Co., N. J., 112 Atl. 406.

43. **Nuisance**—Damages.—Damages as for permanent injury to realty alleged to have been caused by the maintenance and operation of a cotton oil mill are not recoverable, where the injury results, not as an effect of the permanent structure, but from the operations carried on therein, which are capable of modification or

abandonment.—Schneider v. Southern Cotton Oil Co., Ala., 87 So. 97.

44. Physicians and Surgeons—Ordinary Care. —One who by reason of professional relation is placed in position where it becomes his duty to exercise ordinary care to protect others from injury or danger is liable in damages to those who are injured by reason of his failure to exercise such care.—Davis v. Rodman, Ark., 227 S. W. 612.

45. **Railroads**—Burden of Proof.—In an action for injuries at a road crossing within Code 1907, §§ 5473, 5476, a charge that before defendant's servants can be found guilty of wantonness the burden is on plaintiff to reasonably satisfy the jury that the engineer, with knowledge of the circumstances and with reckless disregard of the consequences, operated the train at an excessive rate of speed and without giving warning is erroneous as misplacing the burden of proof imposed by the statute.—Wetzel v. Birmingham Southern R. Co., Ala., 87 So. 96.

46. **Sunday**—Liability to Broker. — Where a principal and agent made a contract on a secular day by which the agent agreed to sell real estate for the principal on given terms, and such agent on secular days procures a purchaser and drafts a written contract, which the principal modifies and signs on Sunday, and which the agent on a secular day gets the purchaser to accept and sign on a secular day, the principal cannot escape liability for paying the agent's commission earned because of the fact that the principal signed the contract on Sunday.—Shireman v. Wildberger, Miss., 87 So. 131.

47. **Specific Performance**—Rise in Value. — Subsequent rise in the value of property is not ground for refusing to enforce a contract of sale. —Compton v. Weber, Ill., 129 N. E. 764.

48. **Sales**—Remote Damages.—In an action to recover damages for the breach of a contract to deliver a harvesting machine, held, that evidence was properly excluded which tended to show damages caused by a raid of grasshoppers because such damages were remote and not within the reasonable contemplation of the parties at the time the contract was made.—Kichner v. Helm, Kans., 195 Pac. 602.

49. **Taxation**—Exemption of Land Banks. — As Congress had power to create the federal land banks and joint-stock land banks authorized by Act July 17, 1916, as amended by Act Jan. 18, 1918, it had power to exempt their capital, surplus, and income, and mortgages executed to such banks thereunder, from federal, state, municipal, and local taxation as was done by section 26.—Smith v. Kansas City Title & Trust Co., U. S. S. C., 41 Sup. Ct. 243.

50.——Federal Owned Corporation.—Where the Secretary of Labor, by virtue of the powers delegated to the President by the National Defense Act of 1918 (U. S. Comp. St. 1918, Comp. St. Ann. Supp. 1919, §§ 3115 5/6a-3115 5/6h), organized a corporation for housing workers in industries essential to the national defense, all of the capital stock being subscribed, paid for, and owned by the federal government, land acquired by such corporation within a city and dwellings constructed thereon held not subject to a tax levied thereon by the city for state, county, and municipal purpose.—U. S. Housing Corp. v. City of Watertown, N. Y., 186 N. Y. S. 309.

51——Sale for Partly Paid Taxes is Null.—A sale of land for taxes a part of which were previously paid, no mater by whom, is absolutely null, and is not protected by the prescription of three years.—Mecom v. Graves, La., 86 So. 917.

52.——Transfer Tax.—Tax Law, § 220, subd. 2, authorizing the tax on transfers of stock in a domestic corporation owned by a nonresident decedent, authorizes a tax on stock pledged to secure a debt, the title to which stock is in the pledge, only to the value of the right of redemption, so that, where the debt for which the stock was pledged exceeded the value of the stock, no tax should be assessed thereon.—In re Hallenbeck's Estate, N. Y., 186 N. Y. S. 293.

53. **Trusts**—Annulment of Deed. — The fact that the grantor of a trust deed given to her brother acted on the advice of her brother and other members of the family, and had no independent advice, though a circumstance which might be considered in connection with other evidence showing an advantage was taken of the grantor, is not of itself sufficient to require the annulment of the deed.—Whiteside v. Verity, U. S. C. C. A., 269 Fed. 227.

54. **United States** — Suit Against Emergency Fleet Corporation.—The Emergency Fleet Corporation, which, was organized with the ordinary powers and liabilities of crporations, but all of whose stock is owned by the United States, and which operates on money provided by the government, is not a governmental establishment, and may be sued without the consent of Congress to such suit.—Pope v. United States Shipping Board Emergency Fleet Corporation, U. S. D. C., 269 Fed. 319.

55. **Vendor and Purchaser** — Bona Fide Purchaser.—Where a man conveys to his wife his lands in consideration of natural love and affection "and in order to enable my said wife to make a bond to secure my release," being at such time in prison and afterwards is bailed out by his wife and returns to and lives with her for 18 or more years without seeking a reconveyance to such lands, a bona fide purchaser for value, from the wife, of such lands, will get a good title free from the claims of the grantor and his heirs.—Young v. Cobb, Miss., 87 So. 125.

56.——Vendor's Lien.—So long as a vendor retains title, he has an express lien for unpaid purchase money, and a vendor's lien does not exist until he has parted with title.—Maetby v. Conklin, Cal., 195 Pac. 280.

57. **Warehousemen** — Habitual Drunkard. — Where an employer hires a habitual drunkard as a warehouseman knowing him to be a habitual drunkard, and where an ordinarily prudent person would not have hired such employee as a warehouseman, employer is liable for damage proximately caused by the employee's drunken negligence.—Runkle v. Southern Pac. Milling Co., Cal., 195 Pac. 398.

58. **Wills**—Estate in Fee.—Under a will devising certain real estate and personalty to widow, but in a subsequent clause reciting, "It is my will that the real estate hereinbefore devised to my wife shall, at her death, descend to my children," held that the intention of the testator to cut his widow down to a life estate is not shown by language as clear and decisive as the language used in the clause creating the fee, and hence that the widow took an estate in fee.—Oliphant v. Pumphrey, Ind., 129 N. E. 710.

59.——Gift Over.—A will devising movable property to testator's husband with gift over held valid as a gift over after a life tenant's death, so that money in bank to life tenant's credit, clearly realized from the sale of such personal property, belonged to beneficiaries under giver's will.—Williams v. Floyd, Del., 112 Atl. 377.

60.——Incapacity. — Insanity of a testator to affect the validity of his will must be either of such a broad character as to establish mental incapacity generally, or some specific form thereof whereby testator is the victim of hallucination or delusion.—In re McGuirk's Estate, Cal., 195 Pac. 279.

61.——Intent.—Under a will whereby testatrix gave moneys to her brother in trust to pay and apply the net income for the use of testatrix's sister for life, and after death of the sister to pay the income for the education and maintenance of the sister's children until the youngest should have attained 21, and then to pay the principal or capital absolutely and in fee simple and in equal shares to the children, the word "children" did not include grandchildren, there being no language indicating such intention, and, testatrix's sister having died, her two surviving children are entitled to an equal share of the whole of the trust estate.—Industrial Trust Co. v. Bennett, R. I., 112 Atl. 354.

62.——Trust Fund. — Where testator has created a trust fund and directed the income be paid to a beneficiary for life, and there is an extraordinary dividend through distribution of extra earnings or on account of an unusual accumulation of earnings, the life tenant is entitled to receive at least some of such extraordinary dividend.—McCracken et al. v. Gulick et al., N. J., 112 Atl. 317.